

Sixth Appellate District

San Jose, California

TUESDAY, FEBRUARY 13, 2007

H028576 RITCHEY v. CONTINENTAL INSUANCE COMPANY

Insofar as the appeal is predicated on alleged error in the order for payment of the arbitrator's fee, it is dismissed. Insofar as it is predicated on error in the order denying plaintiff's petition to vacate the arbitration award, the order is construed as incorporating an order and judgment confirming the award, and as so construed is affirmed. (not published) (Rushing, P.J.; We concur: Premo, J., Elia, J.)
Filed February 13, 2007

H030251 PORTEE v. SUPERIOR COURT OF SANTA CLARA COUNTY; PEOPLE

Let a peremptory writ of mandate issue directing respondent court to file petitioner's "Request for Appointment of Counsel to Prepare a Motion for DNA Testing Pursuant to P.C. Section 1405," and thereafter to proceed in accordance with Penal Code section 1405. The original of petitioner's "Request for Appointment of Counsel to Prepare a Motion for DNA Testing Pursuant to P.C. Section 1405," dated May 9, 2006, is attached as an exhibit to the Petition for Writ of Mandate. The clerk of this court is directed to attach the original May 9, 2006 request to the writ when it issues, keeping a photocopy of the document for this court's file. This decision shall be final as to this court immediately upon filing of the decision. (Cal. Rules of Court, rule 8.264 (b)(3).) Petitioner's motion directed to this court for appointment of counsel for DNA testing is denied. (not published) (Premo, Acting P.J.; We concur: Elia, J., Duffy, J.)
Filed February 13, 2007

H029762 PEOPLE v. MOORE

The judgment is affirmed. (not published) (McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)
Filed February 13, 2007

IN THE MATTER OF THE DESTRUCTION OF COURT RECORDS

This court having been advised by the State Records Center that certain criminal and juvenile records preserved for a period longer than 20 years are eligible for destruction as provided by rule 10.1028(c) of the California Rules of Court, and good cause appearing, it is hereby ordered that said records designated in Records Transfer List 4 and 6 be scheduled for destruction.
Dated February 13, 2007 RUSHING, P.J.

Sixth Appellate District

San Jose, California

Tuesday, February 13, 2007 (continued)

IN THE MATTER OF THE DESTRUCTION OF COURT RECORDS

This court having been advised by the State Records Center that certain civil records preserved for a period longer than 10 years are eligible for destruction as provided by rule 10.1028(c) of the California Rules of Court, and good cause appearing, it is hereby ordered that said civil records designated in Records Transfer Lists 55, 56, 59, and box 32 of Records Transfer List 42, box 1 of Records Transfer List 44, box 14 of Records Transfer List 46, and boxes 25 and 17 of Records Transfer List 52 be scheduled for destruction.

Dated February 13, 2007

RUSHING, P.J.

H030376 PEOPLE v. INFANTE

The judgment is affirmed. (not published)
(Bamattre-Manoukian, Acting P.J.; I concur: Duffy, J.; I concur in the judgment only: Mihara, J.)
Filed February 13, 2007

H029921 PEOPLE v. FULLER

The trial court is directed to modify the judgment by striking the \$400 restitution fund fine, and the suspended parole revocation fine in the same amount that accompanied it, which were imposed on October 13, 2005. The \$200 restitution fine and the \$200 suspended parole revocation fine, which were assessed on August 23, 2004, shall remain in force. The court shall further modify the judgment to reflect defendant's conviction for a violation of Health & Safety Code section 11350. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and to deliver it to the Department of Corrections. (not published)
(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)
Filed February 13, 2007

H030135 PEOPLE v. REED

The probation order is modified to state that defendant: "Not use or possess alcohol, narcotics, drugs or other controlled substances without the prescription of a physician; not traffic in, or associate with persons known to defendant to traffic in, or use, controlled substances." As modified, the judgment is affirmed. (not published)
(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)
Filed February 13, 2007

Sixth Appellate District

San Jose, California

Tuesday, February 13, 2007 (continued)

H029931 PEOPLE v. TAUVIN P.

By the Court*:

Appellant's petition for rehearing is denied.

Filed: February 13, 2007

*Before Premo, J., Rushing, P.J. and Elia, J.

WEDNESDAY, FEBRUARY 14, 2007

The following cases are submitted this date:

H030091 PEOPLE v. LAMMERS

H029905 PEOPLE v. JOHNSON

H030449 In re ALICIA M.; MONTEREY CO. DSES v. TAMMY L.

The order terminating parental rights is reversed. The case is remanded to the juvenile court to inquire of the parents whether Alicia is or may be an Indian child and to order the completion of the JV-130 forms. If the inquiry produces evidence that Alicia is or may be an Indian child, then the juvenile court shall direct the Department to give notice of the proceedings in compliance with ICWA, and shall conduct further proceedings as required. If the inquiry of the parents produces no evidence that Alicia is or may be an Indian child, or there is no confirmation that Alicia is or may be eligible for Indian tribal membership, the court shall reinstate the order terminating parental rights. (not published)

(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed February 14, 2007

H030349 PEOPLE v. ROSILLO

We strike the attorney's fees order and direct the trial court to prepare an amended abstract of judgment. As so modified, the judgment is affirmed. (not published)

(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed February 14, 2007

THURSDAY, FEBRUARY 15, 2007

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Premo, J.; Elia, J.; and S. Nasson, Deputy Clerk.

H028838 PEOPLE v. DULAN

Cause called and argued by Jeanine Strong appearing for Appellant and by John Deist, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Thursday, February 15, 2007 (continued)

H028881 PEOPLE v. AVILA

Cause called and argued by John Dwyer appearing for Appellant and by Gregg Zywicke, Deputy Attorney General, appearing for Respondent. Cause argued and submission deferred pending supplemental letter briefs of no more than 3 pages due within 10 days.

H028839 PEOPLE v. TOLDEN

Cause called and argued by Victoria Stafford appearing for Appellant and by William Kuimelis, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029348 TUCKER v. OTT

Cause called and argued by David Kay appearing for Appellant and by Tom Prountzos appearing for Respondent. Cause ordered submitted.

H028478 PEOPLE v. HORNE

Cause called and argued by Stephen Bedrick appearing for Appellant and by Sara Turner, Deputy Attorney General, appearing for Respondent. Cause ordered submitted. Rushing, P.J. and Elia, J. leave the bench. Mihara, J. and Duffy, J. take the bench.

H029507 TRIPP on Habeas Corpus

Cause called and argued by Rich Pfeiffer appearing for Petitioner and by Denise Yates, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Court recesses until 1:30 p.m.

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Mihara, Acting P.J.; McAdams, J.; Duffy, J.; and Jane Valdez Flor, Deputy Clerk.

H028513 PEOPLE v. CARLIN

Cause called and argued by J. Wilder Lee appearing for Appellant and by Ann P. Wathen, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029563 PEOPLE v. DELEON

Cause called and argued by Silas Geneson appearing for Appellant and by Nanette Winaker, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Thursday, February 15, 2007 (continued)

H030127 ARBURN v. DEPARTMENT OF MOTOR VEHICLES

Cause called and argued by Bonnie Jaway Chen, Deputy Attorney General, appearing for Appellant and by Dennis Lempert appearing for Respondent. Cause ordered submitted. Court is adjourned.

The following cases are submitted this date:

H030145 PEOPLE v. BERNARD

H030572 In re ANGELINA C., et al.; D.F.C.S. v. CYNTHIA B.

FRIDAY, FEBRUARY 16, 2007

H029965 PEOPLE v. DUCHESNE

The judgment is affirmed. (not published)
(Duffy, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)

Filed February 16, 2007

H029019 PEOPLE v. GARCIA

By the Court:

The opinion which was filed on December 18, 2006, and as modified on January 16, 2007, is certified for publication.
(Rushing, P.J.; Premo, J.)

Filed February 16, 2007

H029600 SIMKOVICH v. EVANS

The summary judgment is affirmed. (not published)
(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed February 16, 2007

H028774 KYLES et al. v. GREAT OAKS INTERESTS et al.

The summary judgment is reversed. The court is directed to vacate its previous order granting Defendants' motion for summary judgment and enter a new order granting Defendants' motion for summary adjudication of Plaintiffs' negligence, negligence per se, and negligent infliction of emotional distress causes of action. The court is also ordered to grant Defendants' motion for summary adjudication of the nuisance cause of action that is based on Kaelin's personal injury claims but deny summary adjudication of the nuisance cause of action that is based on the presence of large number of cats on Plaintiffs' property. (not published)

(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed February 16, 2007